

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

June 6, 2023 at 1:30 p.m.

- | | | | |
|----|---|-------------|--|
| 1. | <u>22-21314</u> -E-13
<u>KSR-1</u> | NADIA ZHIRY | CONTINUED STATUS CONFERENCE RE:
MOTION TO EXCUSE TURNOVER
AND/OR MOTION TO CONFIRM
TERMINATION OR ABSENCE OF STAY
5-31-22 <u>[12]</u> |
|----|---|-------------|--|

Debtor's Atty: Peter G. Macaluso

Notes:
Continued from 4/26/23

The Status Conference and Hearing on the Motion is XXXXXXX
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JUNE 6, 2023 STATUS CONFERENCE AND HEARING

No updated Status Reports were filed as of the court's June 3, 2023 review of the Docket. However, several other contested matters have been commenced. These are:

- A. Chapter 13 Trustee's Objection to Debtor's claim of two homestead exemptions for the two addresses. Objection; Dckt. 219.

- B. Chapter 13 Trustee's Opposition to Debtor's Amended Plan. Opp.; Dckt. 223. The Opposition is summarized as follows:
 - 1. The Debtor's Objection to the Claim filed by the State Court Receiver has not been litigated to conclusion.
 - 2. The Amended Plan does not identify which of Debtor's children are responsible for funding the Plan for payment of the JP Morgan Chase claims.

3. The “Additional Provisions” appear to state factual findings as opposed to Plan terms.
 4. The Amended Plan does not provide for the sale of the Property to fund the Plan, but rental to family members.
 5. No explanation has been provided for the changes now being proposed in the Amended Plan.
 6. The Amended Plan does not address a pre-petition transfer of property to Debtor’s non-debtor spouse.
 7. Debtor does not provide evidence of the funding for the Plan being able to be made, but merely states conclusions.
- C. Debtor Motion for Disbursement of Funds in Blocked Account to the Contractor. Motion; Dckt. 228.
- D. The Receiver has filed an Opposition, Dckt. 23. Much of the Opposition recounts past history and takes offense that Debtor commenced a bankruptcy case to try and stop the Receiver from liquidating the property through the receivership.
1. The Receiver asserts that his claim is secured by the Property as provided in the Order Appointing Receiver.

At the hearing, **XXXXXXX**

APRIL 26, 2023 STATUS CONFERENCE

Counsel for the Receiver made the initial comments recounting the long history of the necessary remediation not be completed. In the first bankruptcy case, a Chapter 7, relief from the stay was obtained and the property was abandoned in 2022. After receiving her discharge, Debtor commenced the current Chapter 13 Bankruptcy Case.

As this court has previously noted, this has been a long pending remediation after the appointment of the receiver, with Debtor failing to make the remediation as promised by them and ordered by the State Court, and then through

Debtor’s counsel argued that the evidence will show that the work can be completed in sixty (60) days, and that all will be good.

At the hearing, testimony was provided by Matthew Sartain, a City of Sacramento building inspector; Richard Sanders, the Debtor’s contractor; Daniel Collins, the Receiver’s Project Manager; and Vira Zhiry, the Debtor’s daughter and person who has been active in obtaining money from family members, and herself, to fund the remediation work.

As the record of the March 26, 2023 hearing shows, the court makes a number of findings concerning the good faith of the parties - both the Receiver and Debtor.

While the Receiver makes much hay (and rightfully so) of the slowness of the Debtor, Debtor's family, Debtor's attorney, and Debtor's contractor to get the permits issued on the 1039 Property, the work on the 1049 property has been completed and signed off, and the work as permitted, for the water and sewer connections has proceeded.

Debtor's counsel and witnesses could offer no good explanation for the delay, or Debtor's counsel apparently being in the dark about the permits for the 1039 Property not being issued and that more permit fees needed to be paid.

Much vitriol and harsh words were expressed by each party against the other. Clearly, the Receiver and Debtor have not methodically been working through this to get the remediation done.

As the court pointed out to the Debtor, Debtor's family, and Debtor's counsel at the hearing, the delays in getting the work done are not "for free delays." In addition to Debtor's own counsel's fees, as the court put it the Debtor's "reluctance" to comply with the building ordinances and laws, and not promptly getting the work done has caused recoverable costs and expenses for the Receiver and Receiver's counsel in having to "babysit" the Debtor through multiple continued hearings.

As noted above, the court finds shortcomings in both parties, not just the Debtor, but also the Receiver. Daniel Collins, the Receiver's Project Manager, (the Receiver not being present at the hearing), testified that if the Receiver could get the 1039 Property back from the Bankruptcy Estate, the Receiver's plans were to find a "real estate flipper" to take the Property. The testimony was not that the Receiver – as an officer of the court and having his fiduciary duties as such – would have the necessary repairs made and either have the Debtor pay the reasonable costs and expenses, or if the Debtor would not pay then have the 1039 Property sold in a commercially reasonable manner. No, the testimony was that the Receiver would sell the 1039 Property at a discount to a person looking to quickly resell the property and make a nice profit.

Debtor's counsel has made much of the Receiver having lost in an Adversary Proceeding in the prior Chapter 7 Case of the Debtor to have the obligation owed to the Receiver as of the filing of that case, and future obligation relating to the receivership, determined nondischargeable. Though making comments along the lines that with that loss the Receiver has turned vindictive and now is seeking to torpedo the Bankruptcy Case so he can get his hands on the 1039 Property to enrich himself and those employed by the Receiver, Debtor's counsel provided little about the substance of the Receiver loss in that Adversary Proceeding.

In Adversary Proceeding 22-2089; which is related to Debtor's Chapter 7 Case, 22-21314; the Hon. Frederick E. Clement, Chief Bankruptcy Judge, to who the Chapter 7 Case and the Adversary Proceeding were assigned, made some very straightforward purely legal findings as to why the Debtor prevailed in that Adversary Proceeding.

Judge Clement's Memorandum Opinion and Decision ("MOS") in the nondischargeability Adversary Proceeding related to the Chapter 7 Case makes the very simple and clear statement as to why the Debtor prevailed as a matter of law:

The debt must be penal, not compensatory. *In re Scheer*, 819 F.3d 1206, 1211 (9th Cir. 2016) (refund of attorney’s fees); *Matter of Towners*, 162 F.3d 952, 953 (7th Cir. 1998) (investigative costs for civil fraud discharged)

...

This case is no different than *Schaffer*. The fees and costs were authorized by California Health & Safety Code § 17980.7(c)(5), which authorized the receiver to recover “fees” and “necessary expenses.” There is no indication that the state legislature intended these fees and costs to be anything other than paying the receiver for the necessary costs of doing business.

...

Finally, aside from the ipse dixit assertion, the fees and costs “are to be considered a fine, penalty, or forfeiture,” Pl. Trial Br. 5:17-1, ECF No. 29, the plaintiffs have not directed this court to any authority for the proposition that § 17980.7(c)(5) is anything other than compensatory

...

Finally, the debt must be “to and for the benefit” of the government. 11 U.S.C. § 523(a)(7); *Matter of Towers*, 162 F.3d 952, 955 (7th Cir. 1998) (penalty payable to the Attorney General of Illinois but “for the benefit of the victims” of the defendant’s fraud was insufficient).

...

Even if Keena could show that his own fees and expenses are penal, rather than compensatory, the fact that they are paid directly to him and for his ultimate benefit defeats any rights under § 523(a)(7).

MOD p. 8:12-15, 9:15-20, 10:1-5, 10:7-11, 11:6-7. It is not clear to this court (even after reading the Receiver’s Trial Brief in that Adversary Proceeding; 22-2011, Dckt. 29, as referenced by Receiver’s counsel) why the Receiver would prosecute such an adversary proceeding.

This not to say that the Receiver, Receiver’s counsel, City of Sacramento, and the State Court should not be frustrated by the Debtor’s, and her family member’s, violations of the Ordinances, failures to follow through on settlements and promises made in the State Court Action that pre-dated the Receiver being appointed.

The court remains convinced, at this time, that having the work done through the Chapter 13 case remains the most prudent way to proceed. Some of the basis for this conclusion, at this time, include: the Debtor having to provide for all of the Receiver’s post-Chapter 13 costs and expenses since the Chapter 7 case (which include the costs of having to “babysit” the Debtor during this case), this court having the final determination of professional fees for services provided to the Bankruptcy Estate and the fiduciary Chapter 13 Debtor (11 U.S.C. § 330), and this court being concerned with the testimony that the Receiver just seek to sell the property to a “flipper” if he regains control of the 1039 Property.

APRIL 11, 2023 CONTINUED HEARING STATUS CONFERENCE

Gerard F. Keena III, the Receiver Movant, filed an updated Status Report on April 4, 2023. Dckt. 157. The Movant states Debtor has failed to meet the deadlines set to afford Debtor the opportunity to address the deficiencies to the real property.

The deadlines missed are stated to be:

1. Obtain Final Building Permit.....February 24, 2023
and

2. Certificate of Occupancy.....March 31, 2023

for the 1039 Claire Avenue Property. Status Report, p. 2:9-11; Dckt. 157.

At the Hearing Status Conference, counsel for Movant recounted that this dispute, the nuisances on the property, date back to 2017. In March of 2021 a receiver was appointed when Debtor failed to correct the nuisances.

Debtor filed her first bankruptcy case which stayed the receiver from doing the work. In 2022, the property was abandoned to the Debtor in that case.

Debtor then filed this current bankruptcy case.

There is a certificate of occupancy for the addition to the house.

However, there is a mobile home on the property for which there has not yet been issued a certificate of occupancy. This is identified as the 1039 Property (which is one-half of the property at issue.)

The Chapter 13 Plan, filed on June 8, 2022 (Dckt. 29) set a deadline of 6 months to get the permits in place and have the work completed within 12 months.

Counsel for Debtor reports that the 1039 property is not occupied.

Unfortunately, Debtor's counsel could not present the court with a reason why the corrective work for the 1039 Property was not being diligently prosecuted. Additionally, counsel for Debtor could not explain why the contractor responsible for the work was not keeping the Debtor and Debtor's counsel advised of the status of the permits, or why the contractor was not diligently seeking the issuance of the permits.

As previously required by the court, there is nearly \$50,000 in the blocked account to pay for the permits and the remedial work. But it appears no action is being taken.

The court continues the hearing for consideration of testimony as to the prosecution of the remedial work and the good faith prosecution of this case.

The court requires Debtor's contractor to be at the continued hearing, as well as the Debtor and Debtor's family members who are involved in getting the remedial work accomplished. It appears that over the past months that Debtor, after getting her residence deficiencies correction, has let the work on the adjacent property fall idle.

2. [20-90115-E-7](#) ALI MUTHANA
[21-9008](#)
MCGRANAHAN V. SUWAID ET AL

**CONTINUED PRE-TRIAL CONFERENCE
RE: AMENDED COMPLAINT FOR
AVOIDANCE OF UNAUTHORIZED
POST-PETITION TRANSFER AS TO
DEFENDANTS; RECOVERY OF AVOIDED
PROPERTY AS TO ALL DEFENDANTS;
DECLARATORY RELIEF
6-1-22 [33]**

Plaintiff's Atty: Daniel L. Egan; Jason Eldred
Defendant's Atty:
David C. Johnston [Bader Alikassim Suwaid]
Timothy J. Silverman [GNN Real Estate and Mortgage, Inc.]
Gurjeet S. Rai [Ali Muthana]

Adv. Filed: 7/26/21

Answer:

8/27/21 [Bader Alikassim Suwaid]
9/20/21 [GNN Real Estate and Mortgage, Inc.]

Amd. Cmplt Filed: 6/1/22

Answer:

8/2/22 [GNN Real Estate and Mortgage, Inc.]
8/18/22 [Ali Muthana]

Amd. Answer:

9/7/22 [GNN Real Estate and Mortgage, Inc.]

Nature of Action:

Recovery of money/property - other

Validity, priority or extent of lien or other interest in property

Declaratory judgment

Notes:

Continued from 5/4/23. Specially set time and date to the Sacramento Division Courthouse, to be conducted in conjunction with the Dismissal Status Conference.

The Status Conference is XXXXXXX
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At the Status Conference, XXXXXXX

MAY 4, 2023 STATUS CONFERENCE

The court has entered a separate judgment in favor of the Plaintiff-Trustee against Defendant-Debtor Ali Saeed Muthana and Defendant Bader Suwaid. The only remaining claims to be adjudicated are against Defendant GNN Real Estate and Mortgage, Inc. ("GNN").

The court has approved a settlement between the Plaintiff-Trustee and GNN. On April 27, 2023, a Stipulation to Dismiss this Adversary Proceed was filed by all parties, including the two Defendants against who there is a Final Judgment issued by this court.

It being unclear whether the Plaintiff-Trustee and other Parties were seeking to dismiss this Adversary Proceeding and vacate the Final Judgment (upon which the court subsequently approved the sale of the real property that is the subject of the dispute in this Adversary Proceeding), or “merely” dismiss the action as it relates to GNN.

The court has set a Dismissal Status Conference for June 6, 2023.

At the May 4, 2023 Status Conference counsel for the Plaintiff-Trustee addressed the court, confirming that it is not the intention of the Parties to dismiss the Adversary Proceeding with respect to the Final Judgment already entered. The Parties will file an Amended Stipulated Dismissal and lodge with the court a proposed order thereon (an order being issued by the court to clearly document that the Adversary Proceeding is not dismissed as to the Final Judgment entered herein.

3. [20-90115-E-7](#) **ALI MUTHANA**
[21-9008](#)
MCGRANAHAN V. SUWAID ET AL

**STATUS CONFERENCE RE:
STIPULATION DISMISSING
ADVERSARY PROCEEDING
4-27-23 [\[110\]](#)**

Plaintiff's Atty: Daniel L. Egan; Jason Eldred
Defendant's Atty:
David C. Johnston [Bader Alikassim Suwaid]
Timothy J. Silverman [GNN Real Estate and Mortgage, Inc.]
Gurjeet S. Rai [Ali Muthana]

Adv. Filed: 7/26/21

Answer:

8/27/21 [Bader Alikassim Suwaid]
9/20/21 [GNN Real Estate and Mortgage, Inc.]

Amd. Cmplt Filed: 6/1/22

Answer:

8/2/22 [GNN Real Estate and Mortgage, Inc.]
8/18/22 [Ali Muthana]

Amd. Answer:

9/7/22 [GNN Real Estate and Mortgage, Inc.]

Nature of Action:

Recovery of money/property - other

Validity, priority or extent of lien or other interest in property

Declaratory judgment

Notes:

Continued from 5/4/23. Specially set time and date to the Sacramento Division Courthouse.

The Status Conference is XXXXXXX
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Michael McGranahan, the Plaintiff Chapter 7 Trustee, ("Plaintiff-Trustee") commenced this Adversary Proceeding to avoid alleged post-petition transfers of real property and interests in said real property(the "Real Property") by Defendant-Debtor Ali Saeed Muthana, the Chapter 7 Debtor, to Defendant 2 Bader Suwaid, and then a transfer of a security interest by a deed of trust, from Defendant 2 Bader Suwaid to Defendant 3 GNN Real Estate and Mortgage, Inc. Dckt. 1. Additionally, the Complaint seeks to quiet title to the property, with Plaintiff-Trustee requesting the court determine that the Plaintiff-Trustee and Chapter 7 Bankruptcy Estate hold title to the "Real Property" free and clear of interests of Defendant 2 Bader Suwaid and Defendant 3 GNN Real Estate and Mortgage, Inc.

On November 18, 2022, the court entered a separate judgment as provided in Federal Rule of Civil Procedure 54(b) against Defendant-Debtor Ali Saeed Muthana and Defendant 2 Bader Suwaid determining that: (1) the post-petition transfer of the "Real Property" by Defendant-Debtor to Defendant 2

Bader Suwaid is avoided pursuant to 11 U.S.C. § 549, (2) the post-petition transfer of an interest in the “Real Property” in the form of a “Rent Free Letter” by Defendant 2 Bader Suwaid to Defendant-Debtor is avoided pursuant to 11 U.S.C. § 549, and (3) the separate judgment does not adjudicate the rights and interests of Defendant 3 GNN Real Estate and Mortgage, Inc. in the “Real Property.” Jdgt.; Dckt. 102. No appeal was taken from this separate judgment entered against Defendant-Debtor and Defendant 2 Bader Suwaid, and that is now a Final Judgment.

Subsequently, the Plaintiff-Trustee and Defendant 3 GNN Real Estate and Mortgage, Inc. reached a Settlement of all issues of Plaintiff-Trustee’s claim against Defendant 3 GNN Real Estate and Mortgage, Inc., which Settlement was approved by the court in Defendant-Debtor’s Chapter 7 Case. 20-90115; Settlement Agreement, Exhibit A, Dckt. 145; Order Approving Settlement, Dckt. 153. The Settlement Agreement, ¶ G, expressly recites the court having entered judgment against Defendant-Debtor and Defendant 2 Bader Suwaid avoiding the post-petition transfers of the “Real Property” and interests therein.

The Settlement with Defendant 3 GNN Real Estate Mortgage, Inc. was funded by the sale of the “Real Property,” which the court approved in Defendant-Debtor’s Chapter 7 Case, the court having previously avoided the post-petition transfers by the separate judgment entered against Defendant-Debtor and Defendant 2 Bader Suwaid in this Adversary Proceeding. *Id.*; Order Approving Sale, Dckt. 139.

In ordering the sale of the Real Property in Defendant-Debtor’s Chapter 7 Case, the court relied on there being a Final Judgment against Defendant-Debtor and Defendant 2 Bader Suwaid, raising possible issues of Judicial Estoppel.

Stipulation to Dismiss

On April 27, 2023, a Stipulation to Dismiss Adversary Proceeding was filed. Dckt. 110. The parties to the Stipulation are the Plaintiff-Trustee; Defendant-Debtor Ali Muthana and Defendant 2 Bader Suwaid (against whom judgment has been entered); and GNN Real Estate and Mortgage, Inc. It states that those parties “hereby stipulate to dismissal of the above-captioned Adversary Proceeding with prejudice.”

At this time, the only parties with issues to be litigated in this Adversary Proceeding are the Plaintiff-Trustee and Defendant 3 GNN Real Estate and Mortgage, Inc. Thus, it appears that what remains to be dismissed is this portion of the Adversary Proceeding.

Alternative, if the Parties are intending to dismiss this Adversary Proceeding in its entirety by this Stipulation, the Parties appear that they may be vacating the separate Final Judgment of this court against Defendant-Debtor and Defendant 2 Bader Suwaid. If so vacated, then are the avoided post-petition transfers no longer voided and the interest acquired by purchaser now subject to such non-avoided transfers? If the Final Judgment is avoided, then must the Parties give notice to the purchaser of the Real Property, to afford the purchaser Due Process before they possibly alter the property rights and interests of the purchaser?

The court presumes that the Parties do not intend to vacate the court’s Final Judgment avoiding the post-petition transfers and purporting to alter the rights and interests of the purchaser, but to dismiss the Adversary Proceeding as to Defendant 3 GNN Mortgage and Real Estate, Inc.

June 6, 2023 Status Conference Re Dismissal Stipulation

No amended stipulation to dismiss or other pleadings have been filed as of the court's June 3, 2023 review of the Docket.

At the Status Conference, **XXXXXXX**